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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J.C. et al., Persons Coming Under the
Juvenile Court Law.

B244390
(Los Angeles County Super. Ct.
No. CK77292)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Anthony Trendacosta, Juvenile Court Referee. Affirmed.

Kimberly A. Knill, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

L.G. (mother) appeals from order denying her petition under section 388 of the Welfare and Institutions Code¹ to reinstate reunification services for J.C. and C.C. She contends denial of the petition was an abuse of discretion. We affirm.

FACTS AND PROCEDURAL HISTORY

J. was born in 2007 and C. was born in 2008 to mother and H.C. (father), who were married and lived together.² Also living in the family home was C.'s twin sister, Wendy, who was born with multiple congenital abnormalities, including anomalies of her digestive system, brain, heart, lungs, renal system, and limbs.³ Father worked during the day and went to school three nights a week, while mother, assisted by a 40-hour per week nurse, cared for the children. J. and C. were not developing age-appropriately. J. made no attempt to speak, did not make eye contact, was extremely active, became upset easily, and banged his head against objects during tantrums. Spending so much time with the children in the small confines of the family residence, mother felt frustrated. She made threats of physical harm to J.

In May 2009, seven-month-old Wendy was diagnosed with brain and eye injuries, in different stages of healing, that were consistent with violent shaking, spinning, or strangulation. The parents denied inflicting the abuse and gave no explanation. The children were detained from parental custody on May 13, 2009, and a dependency petition was filed.

On November 16, 2009, the children were declared dependents of the court, based on sustained allegations under section 300, subdivisions (a) (physical abuse inflicted nonaccidentally), (e) (severe physical abuse of a young child), and (j) (sibling abuse),

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² The dependency court found father to be the children's presumed father.

³ Hereinafter, J., C., and Wendy will collectively be referred to as the children.

which placed J. and C. at risk of physical and emotional harm. The dependency court found Wendy's injuries were the result of nonaccidental trauma that would not ordinarily occur except as the result of deliberate, unreasonable, and neglectful acts of the parents. "[W]e may never know who [is] responsible, actually responsible. But that's really not the issue before the court. . . . The child was in the care, custody and control of the parents. They are the only ones who essentially had the total care, custody and control. Yes, the nurse was there. But nurse was there while mother was there. So I don't know that we will know the actual perpetrator." The court found there were "clearly two separate incidents causing bleeding."

Custody was taken from the parents. The Department of Children and Family Services was ordered to provide reunification services. The dependency court stated the case involves "very unsophisticated parents living as close to the bone as they possibly can be. Father is working all day, trying to make the better of himself and for his family. They're living in a very confined space. Mother is left alone with three children, one of which is medically fragile, [another] of which is hyperactive. It's not surprising that someone would react the way in which one would presume mother reacted in this context. And I . . . look at this case in that context, and [our] obligation at that point is to try to provide those services to the parents so they learn what happened, why it happened, how it may not happen in the future." The parents were granted monitored visits and ordered to participate in counseling with a licensed therapist. Mother was ordered to participate in hands-on parenting training.

During visitation, mother did not control or redirect J. and C. when they acted out. "[T]he children control the visits and not the parents." Mother told J. to "shut up," and she slapped him on one occasion. Mother denied her conduct and blamed the visitation monitor for encouraging J.'s misbehavior. She continued to deny she was the person who harmed Wendy. She blamed the in-home nurse.

The parents failed to reunify with J. and C. On January 4, 2011, the dependency court terminated reunification services and set the matter for a section 366.26 hearing (setting order) on May 3, 2011. The court found return of the children to the parents'

custody would create a substantial risk of detriment, and although mother was in compliance with the case plan, she failed to make substantive progress. Mother was “[unable] to properly direct and supervise the children during visits.” Mother did not accept responsibility. “[W]hen you have a case where the finding by the court is of inflicted trauma on more than one occasion due to the deliberate and unreasonable acts of the parents, it should be apparent that unless and until the parents accept that responsibility, how can substantial progress be realized?” “[D]espite the undisputed findings by the doctors of inflicted trauma on at least two occasions, the parents seem to have never accepted any responsibility. Instead they seem to blame everyone else for this case[.]”

Following the setting order hearing, mother continued to state she did not know how Wendy sustained her injuries.⁴ Father separated from mother because the parents had been advised he had a better chance of having the children returned to his care if he did not live with mother.

On April 27, 2012, mother filed a section 388 petition requesting reinstatement of reunification services, return of J. and C. to her custody, or unmonitored visits, on the ground that circumstances had changed in that “mother has taken full responsibility for . . . Wendy’s injuries and has made ‘huge therapeutic progress.’” She alleged the change of order would benefit J. and C., in that mother visited consistently, J. and C. were bonded to mother, no approved adoptive home had been found, and mother had adequately addressed the case issues. Mother attached a letter from her therapist, who stated mother was “now able to understand AND TAKE FULL RESPONSIBILITY for allowing Wendy’s injuries to happen when Wendy was in her care.”

Mother had been having monitored, afternoon-long or day-long visits once a week. Despite her participation in counseling and other reunification services, mother continued to deny any wrongdoing concerning Wendy’s injuries; she only went as far as saying she may have caused the injuries, out of ignorance, by handling Wendy as if

⁴ Parental rights to Wendy were terminated on November 4, 2011.

Wendy were a normal infant, not medically fragile. On the day before the injuries were discovered, she “might have grabbed her inappropriately” when the child appeared to need to vomit. This was the only time she remembered grabbing Wendy in that way. When she demonstrated to the social worker how she had handled Wendy, the social worker concluded that nothing mother did in the demonstration could have caused Wendy’s traumatic injuries Wendy suffered.

A nonrelative extended family member with whom J. and C. were bonded, wanted to adopt J. and C., and she began the process of obtaining a home study. J. and C. had overnight visits in the prospective adoptive home and were emotionally ready to move in. J. was diagnosed with attention deficit hyperactivity disorder and mixed receptive expressive language disorder. He received special education and mental health services. Mother did not believe J. had special needs.

The section 388 petition was heard and denied on September 18, 2012.⁵ The dependency court stated that, in sustaining the allegations of the petition, it had made an implicit finding that mother was the perpetrator. The objective of providing reunification services was so the parents would “learn what happened, why it happened, how it may not happen in the future.” “I don’t think she’s there yet.” “[T]here does appear to be more than one incident in this case. And despite mother’s testimony, I’m not exactly convinced that she’s not just saying what I believe she needs to say to have a 388 granted. Because she still hasn’t really gotten to the root.” While some of the problems during visits, such as slapping J. and not reacting appropriately to J.’s and C.’s behaviors, had somewhat resolved, and mother was complying with her case plan, “we’re still evolving here.” Circumstances were changing, but mother hadn’t made the type of progress or change that was needed.

⁵ On July 25, 2012, the dependency court granted father further reunification services.

DISCUSSION

Denial of Mother's Section 388 Petition Was Not an Abuse of Discretion

Under section 388,⁶ the dependency court should modify an order if circumstances have changed such that the modification would be in the child's best interest. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526 & fn. 5.) Once reunification services are terminated, the focus shifts from reunification to the child's need for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

We review the ruling for abuse of discretion. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.) “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) Where substantial evidence supports the order, there is no abuse of discretion. (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 839.) Issues of fact and the credibility of witnesses are questions for the trial court. (*In re Carmaleta B.* (1978) 21 Cal.3d 482, 495.)

Substantial evidence supports the finding circumstances had not substantially changed since reunification services were terminated. J. and C. were dependents, because mother violently shook Wendy on at least two separate occasions, which placed J. and C. at risk of harm. Mother denied wrongdoing. Reunification services were terminated, because mother did not acknowledge her role. Twenty months later, when the section 388 petition was heard, mother still denied what she had done. She admitted

⁶ Section 388 provides in pertinent part that a parent “may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made [¶] . . . [¶] If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held”

only to handling the fragile child as if she were a normal child or grabbing her on one occasion. There was evidence the handling she admitted could not have caused the injuries, and the dependency court did not believe her. Not having acknowledged her role, she was not rehabilitated, and J. and C. continued to be at risk. This is substantial evidence circumstances had not changed, and, accordingly, the order denying mother's section 388 petition was not an abuse of discretion.

DISPOSITION

The order is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.